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HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal No. 105/2004

Appellant
Plaintiff

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Gayalal Sharma, son of late
Gariba Sharma, Caste:
Vishwakarma, resident of
Vishwakarma Furniture Mart,
Power House Road, Korba, Tah: &
Dt: Korba (C.G.)

Versus

Respondents
Defendants

1.

Jainab Bee, widow of late
Umaradaraz Khan, aged about 67
years, Caste Muslim, resident of
Rajendranagar, Tah: & Dt:
Bilaspur (C.G.)

2.

Bajranglal Soni, son of
Satyanarayana Soni, aged about
41 years, caste: Sonar, resident of
Purani Basti, Korba, Tah: & Dt:
Korba (C.G.)

3.

Smt. Radha Soni, wife of Shri
Bajranglal Soni, aged about 34
years, caste Sonar, resident of
Purani Basti, Korba, Tah: & Dt:
Korba (C.G.)

Miscellaneous Appeal Under Order 43 Rule :1(r) of the Code of
Civil Procedure

Present:-

Shri N.K. Agrawal, Senior Advocate with Shri Qamrul Aziz, counsel
for the appellant.

ORAL ORDER
(Passed on 16-07-2007)

Heard on admission.

2. The appellant/plaintiff is aggrieved by an order dated
7.1.2004 passed by the First Additional District Judge, Korba in Civil
Suit No. 5-A/2003 whereby his application under Order 39 Rules 1
and 2 read with Section 151 of the C.P.C. was dismissed.



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41 years, caste: Sonar, resident of
Purani Basti, Korba, Tah: & Dt:
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and 2 read with Section 151 of the C.P.C. was dismissed.

3. Brief facts are that the appellant/plaintiff is a tenant of respondent/defendant No. 1 in the suit premises. The appellant/plaintiff filed a suit against the respondents/defendants^{No. 1} for specific performance of contract to sell the suit premises on the ground that on 24-11-2001 the respondent/defendant No. 1, landlord had agreed to sell the suit premises for a consideration of Rs.5 lacs and had received Rs.1 lac as earnest money. The respondent/defendant No.1, prior to the institution of the civil suit, had sold the suit premises to respondents No. 2 and 3 by a registered sale deed dated 11-4-2002. Apprehending forceful dispossession from the suit premises by the respondents/defendants No.2 and 3, the appellant/plaintiff filed an application under Order 39 Rules 1 and 2 of the C.P.C. It is not in dispute that the respondent/defendant No.1 has sold the suit premises to respondent No. 2 and 3 by a registered sale deed prior to the date of suit. It is also not in dispute that there is no written agreement between the tenant i.e. the appellant/plaintiff and the respondent/defendant No. 1 – the landlord/owner regarding sale of the suit premises. It is also not in dispute that there was no material to show advancement of Rs.1 lac by the respondent/defendant No.1 to the appellant/plaintiff.

4. In this view of the matter, neither the appellant/plaintiff has a *prima facie* case nor the balance of convenience lies in his favour. No irreparable injury is caused to the appellant/plaintiff as he could not be dispossessed otherwise than in accordance with law. The rejection of the application filed under Order 39 Rules 1 and 2 read with section 151 of C.P.C. by the lower Court is just and proper and does not call for any interference. Accordingly, the appeal is dismissed.

5. Consequently, M.(C).P.No.171/2004 which is an application for issuance of prohibitory temporary injunction and I.A. No. 423/2004 for urgent hearing stand disposed of.

Sd/-
Dilip Raosaheb
Deshmukh
Judge